

ESTTA Tracking number: **ESTTA188195**Filing date: **01/23/2008**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	adidas America, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	5055 N. Greeley Avenue Portland, OR 97217 UNITED STATES		

Attorney information	David K. Friedland Lott & Friedland, P.A. Suite 1100 Coral Gables, FL 33134 UNITED STATES dkfriedland@lfiplaw.com, jrlich@lfiplaw.com Phone:305-448-7089
----------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Registration Subject to Cancellation

Registration No	2202454	Registration date	11/10/1998
Registrant	CALMESE, MICHAEL 14666 N. 90TH LANE PEORIA, AZ 85381 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 1994/04/01 First Use In Commerce: 1995/11/00 All goods and services in the class are cancelled, namely: clothing, namely, men's and women's shirts, men's and women's T-shirts, men's and women's shorts, baseball hats, men's and women's jackets, [socks,] underwear and men's and women's sweatshirts

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
-------------------------------------------------	---------------------------------------------

Attachments	PETITION TO CANCEL.pdf (4 pages)(665786 bytes) EXHIBIT A.pdf (3 pages)(508199 bytes)
-------------	-----------------------------------------------------------------------------------------------

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jaime S. Rich/
-----------	-----------------

Name	Jaime S. Rich
Date	01/23/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

adidas America, Inc., a Delaware
corporation,

Petitioner,

v.

Michael D. Calmese, a resident of
Arizona,

Registrant

Cancellation No.: _____

Registration No.: 2,202,454

Registration Date: November 10, 1998

Mark: **PROVE IT!**

PETITION TO CANCEL

Pursuant to 15 U.S.C. § 1064(3) and TBMP § 307.01, Petitioner, adidas America, Inc. ("Petitioner"), a Delaware corporation, located and doing business at 5055 N. Greeley Avenue, Portland, Oregon 97217-3524, is and will be damaged by Registration No. 2,202,454 and hereby petitions to cancel same.

As grounds for this Petition, Petitioner alleges as follows:

1. According to the electronic records of the United States Patent and Trademark Office ("PTO"), Registrant Michael D. Calmese ("Registrant"), a resident of Arizona, is doing business at 14666 N. 90th Lane, Peoria, Arizona, 85381, and is the record owner of U.S. Trademark Registration 2,202,454 for the mark **PROVE IT!**, which registration issued on the Principal Register on November 10, 1998.

2. U.S. Trademark Registration No. 2,202,454 includes: "clothing, namely, men's and women's shirts, men's and women's T-shirts, men's and women's shorts, baseball hats, men's and women's jackets, [socks,] underwear and men's and women's sweatshirts," in International Class 25.

3. Petitioner believes that it is and is likely to continue to be damaged by the continued existence of Registration No. 2,202,454 in that Petitioner has advertised, promoted, distributed and used the phrase "prove it" in its in its ordinary descriptive sense since 2007 in connection with t-shirts and Petitioner's continued and legal use of this mark will be impaired by the continued registration of Registration No. 2,202,454.

4. Petitioner is likely to be damaged by the continuance of Registration No. 2,202,454 in that Registrant has alleged, and Petitioner denies, that Petitioner's use of the phrase "prove it" in respect of athletic apparel constitutes false designation of origin, sponsorship and/or affiliation and unfair competition of his **PROVE IT!** mark in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125 (a).

5. Upon information and belief, Registrant submitted specimens to the PTO on September 6, 2006, alleging continuing use of the **PROVE IT!** mark. True and correct copies of the specimens submitted are attached as Exhibit A.

6. Upon information and belief, the specimens submitted by Registrant were date-stamped "MAY 18, 1998." See Exhibit A.

7. In violation of 15 U.S.C. § 1058, the specimens submitted by Registrant do not show current use of the **PROVE IT!** mark in connection with the goods identified in Trademark Registration No. 2,202,454.

8. Upon information and belief, the appropriate maintenance documents were not properly filed by Registrant and the resulting registration is not valid and should be cancelled.

9. Upon information and belief, Registrant is not offering certain goods identified in the registration, namely "underwear" and/or "men's and women's shorts," for sale in connection with the **PROVE IT!** mark.

10. Upon information and belief, Registrant knowingly made verified statements alleging continuing use of the **PROVE IT!** mark at the time of filing his Section 8 and 15 Affidavits and in support of registration of the **PROVE IT!** mark which were false. In so doing, Registrant committed fraud on the United States Patent and Trademark Office so that the resulting registration, Registration No. 2,202,454 should be cancelled.

11. Upon information and belief, Registrant knew or should have known that such misrepresentations of fact identified herein were false and/or misleading.

12. Upon information and belief, Registrant has committed fraud in procuring Registration No. 2,202,454 for **PROVE IT!**, thus making Registrant's registration of **PROVE IT!** *void ab initio*.

13. Additionally, and as an alternative basis for Petitioner's claim for relief in this matter, upon information and belief, Registrant has abandoned the mark **PROVE IT!** due to nonuse in U.S. commerce, and Registrant lacks an intent to resume use in U.S. commerce.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Petition to Cancel be sustained and granted in favor of Petitioner and that Registration No. 2,202,454 be cancelled and removed from the Principal Register.

Date: January 23, 2008

Respectfully submitted,

LOTT & FRIEDLAND, P.A.



David K. Friedland

Jaime S. Rich

355 Alhambra Circle

Suite 1100 (zip code: 33134)

Post Office Drawer 141098

Coral Gables, Florida 33114-1098

(305) 448-7089 telephone

(305) 446-6191 facsimile

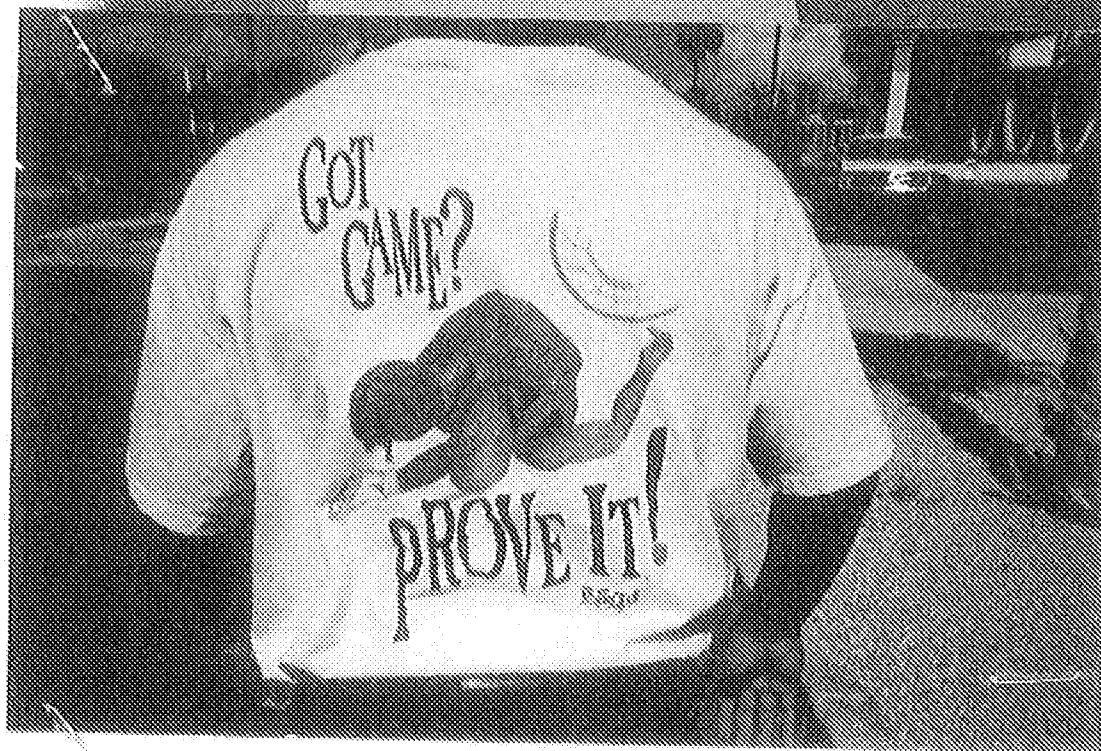
dkfriedland@lfiplaw.com

jrich@lfiplaw.com

Attorneys for Petitioner

Our File 01153-1-8820

EXHIBIT A



PROVE IT!™

PROVE IT!™

PROVE IT!™

PROVE IT!™